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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JESSIKA K.,

a Person Coming Under the Juvenile Court Law.

B190746
(Los Angeles County
Super. Ct. No. CK25430)

LOS ANGELES COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KERRY K.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,
Valerie Lynn Skeba, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)
Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County
Counsel, and Lisa Proft, Deputy County Counsel, for Plaintiff and Respondent.

Kerry K. (Mother) appeals from a juvenile court order terminating her parental rights over her minor daughter, Jessika K., pursuant to Welfare and Institutions Code section 366.26.¹ Mother contends that the parent-child relationship exception to termination of her rights, set forth in subdivision (c)(1)(A) of section 366.26, applies. We conclude that substantial evidence supports the termination of parental rights, and accordingly affirm.

FACTS

In November 2004, the Orange County Social Services Agency (OCSSA) filed a section 300 petition regarding then 4-year-old Jessika K. The petition alleges that Jessika's mother was arrested in November for forgery and burglary, that she has an extensive criminal history, that she has a history of substance abuse, and that she previously received multiple services, including family reunification and family maintenance but that she has continued to place her daughter at risk. The petition further alleges that Jessika's older sister, Krystal K., and older brother, Kristian K., were dependent children of the juvenile court.

According to the OCSSA detention report, Jessika was with Mother when Mother was arrested at a store in Yorba Linda for using false identification to pass a counterfeit check. Jessika was reportedly "upset and cried when she realized her mother was being arrested."

The OCSSA jurisdiction and disposition report indicated that Mother's older children were made dependents of the court in 1996 and that Mother has failed to reunify with them. Mother did not give the OCSSA social worker a working telephone number and she reportedly "continues in her pattern of neglect, as she

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

has made no effort to contact her children through Social Services, nor has she presented herself. According to the Los Angeles County social worker, the mother has a history of disappearing during critical points in the case.”

The case was transferred from Orange County juvenile court to a Los Angeles County juvenile court because of Mother’s San Fernando Valley residence.

According to the disposition report prepared by the Los Angeles County Department of Children and Family Services (DCFS), Mother has been arrested multiple times, including in 1996 for a carrying a concealed weapon in a vehicle and carrying a loaded firearm in a public place, and in 2003 for possessing and being under the influence of a controlled substance. The DCFS reported that mother “has an eight year history of neglect of her children, a 10-16 year history of drug abuse problems, instability in her places of residence, and poor judgment in her choice of male companions who have serious criminal records and with whom she has had violent physical and verbal altercations or who were drug abusers. In addition, the mother has had inconsistency of visitation with her older children during Family Reunification and Permanent Placement Services. The mother has little to no insight into how her choices and actions have negatively affected Jessika and Jessika’s siblings. Further, the mother has made several conflicting statements about the paternity of the child. . . . The mother is currently living with a former and/or current male companion who also has an extensive criminal history.”

The disposition report stated that one DCFS social worker who worked with mother for four years “stated that the mother starts out with the intention of doing well and following case plans, but then doesn’t follow through. For example, the mother has started at least three different drug programs, but has never finished one. In addition, the mother will start out visiting with her children, and then will

either stop entirely or visit very seldom. Her older children have suffered a great deal of distress over their mother's failure to show up at scheduled visits. Further, the mother stopped drug testing in August of 2004. She simply failed to show up on days she was supposed to test. [The social worker] has given the mother numerous referrals for counseling and has even offered to find funding for individual counseling, make appointments for her and drive her there the first time. The mother has not complied with this request." In September 2004, mother was arrested for assault with a deadly weapon because she tried to stab her employer with a screwdriver when the employer did not want her to use a truck to pick up her daughter from day care. A subsequent DCFS report indicated that mother was incarcerated through September 2, 2005.

Meanwhile, in April 2005, Jessika was declared a dependent child of the juvenile court.

The progress report by Jessika's foster home agency stated that as of October 1, 2005, Jessika was placed with foster parents Phillip and Carol R. The agency reported that Jessika was doing well in her new foster home, and that she enjoyed playing with her foster siblings. Starting in December, when mother missed some visits, Jessika would express anger toward mother. She began calling her foster mother "mommy" in front of her birth mother, but also called her birth mother "mommy." Jessika "asked her foster mother to stay during a few of her visits with her birth mother." The progress report further stated that "Jessika has developed a close bond with her youngest foster brother and foster sister. Jessika seems to look up to her foster sister and depends on her to help her with things. Jessika continues to look to her foster parents for comfort and support. She has become more attached to her foster parents and also seems to have developed a strong sense of trust."

According to the section 366.26 report for February 8, 2006, the DCFS social worker observed that Jessika clearly relied on her foster mother to take care of her needs. The report stated that the foster parents are interested in maintaining Jessika's connection to her birth family and to arrange family visits. At the same time, "[a]fter they recognized that Jessika would probably not reunify with her mother, they approached an independent adoption agency to have their home study completed and approved." DCFS recommended that Jessika's foster parents adopt her. Their adoption home study was completed and approved February 3, 2006. DCFS reported that Jessika accepts the foster mother as a mother figure, and the foster parents treat her like their own children, receiving the same love and attention and consequences as the other children. DCFS opined that the foster parents "are very committed and capable of providing a safe and nurturing home environment for this youngster. They have demonstrated their ability to do so as foster parents. The family is financially stable and can address all of Jessika's emotional and physical needs."

Regarding visitation, the DCFS section 366.26 report noted that mother missed two visits in a row in January 2006. DCFS stated, "It is unclear how Jessika is responding to these visits. As she is struggling with bedwetting, her foster mom informed CSW that during these two weeks that she has not seen her mother, Jessika has had five dry nights."

On February 8, 2006, the juvenile court continued the contested section 366.26 hearing to March 29.

For the March 29 hearing, DCFS filed an interim review report stating that since the last court date, mother has had two visits with Jessika, on March 2 and March 15. From October 1, 2005 through March 15, 2006, mother has had visits on October 6, 19 and 26, November 2, 9, 16 and 30, December 14, 21 and 28, January 4 and 25, February 1 and 8, and March 2 and 15. Mother missed visits on

November 23, December 7, January 11, 13 and 18, February 11 and 22, and March 1 and 8. The report stated that toward the end of December, “Jessika began to become more distant with her birth mother and initiated less affection towards her. Normally Jessika loves sitting in her birth mother’s lap, this worker noticed that after the birth mother had missed visits Jessika was not as affectionate. . . . Jessika and her birth mother enjoy talking about old memories they’ve had together. Jessika also loves to share all of the fun things she had been doing with her foster parents and her foster siblings. . . . Jessika has no trouble saying good-bye to her birth mother but most of the time she likes to have hugs at the end of a visit. Jessika does not like it when the birth mother kisses her and does not ever kiss her birth mother on the cheek. Jessika seems to be excited to go home to her foster home after her visits so she can see her foster siblings.”

The report explained in detail how Jessika would vent her anger when Mother would miss visits starting in December 2005. The foster mother “would take Jessika out into the backyard so she could hit trees with sticks to get her frustration and feelings out. Jessika seems to have lost some trust in her birth mother and has become very bonded with her foster mother because of the consistency that she receives from her.” Although the DCFS social worker felt that Jessika has a bond with her birth mother, she felt that the bond with her foster family has gotten very strong over the past five and a half months. The social worker wrote, “Jessika seems to feel safe and secure with her foster family. She shares a special connection with each foster family member. Jessika is very loved and well taken care of. One of the best things for Jessika in this foster home is the consistency that they have shown her. This is something that is very important for Jessika. Jessika needs a place of permanency at this crucial time in her development.”

DCFS reported that although mother has a strong bond with Jessika, “it would be imprudent to assume that terminating parental right is detrimental to Jessika’s well being. . . . She has come to rely on [the foster parents] to care for her. On 1/4/06, during a monitored visit between Jessika and [mother], this CSW observed Jessika going to [the foster mother] calling her ‘mommy’ asking her for things. This behavior implies that Jessika has developed a trust in [the foster mother] a trust that she does not have towards her mother who has at times disappointed her by not showing up to visits and by not being there for her when she was younger. During a recent visit with Jessika she informed this CSW that ‘*I think it is better I stay in [the foster mother’s] home, that would be better*’. CSW was surprised to hear this unprovoked utterance and so she asked Jessika if this was anyone’s idea. With confidence she reported ‘*No it is my idea*’.” (Italics in original.) DCFS recommended that mother’s parental rights be terminated to allow for DCFS to proceed with the adoptive placement of Jessika.

At the March 29, 2006 section 366.26 hearing, mother’s trial attorney argued that mother met the parent-child relationship exception to termination of parental rights. Rejecting this argument, the juvenile court stated, “I think the problem with the [section 366.26, subdivision] (c)(1)(A) exception is that mother has to show that she’s acted in a parental role. And she really hasn’t done that for a very long time. I mean, she’s not even here today. And if you’re not going to appear at the hearing where your parental rights might be terminated, that tells me a whole lot about her parenting ability.”

The juvenile court accordingly terminated mother’s parental rights, and ordered adoption as the permanent plan for Jessika.

DISCUSSION

Mother contends that the parent-child relationship exception to termination of parental rights, set forth in subdivision (c)(1)(A) of section 366.26, applies. Under this subdivision, there is no termination of parental rights where a parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

“In the context of the dependency scheme prescribed by the Legislature, we interpret the ‘benefit from continuing the [parent/child] relationship’ exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

“The parent has the burden to show that the statutory exception applies. . . . [¶] The parent must do more than demonstrate ‘frequent and loving contact[,]’ [citation] an emotional bond with the child, or that parent and child find their visits pleasant. [Citation.] Instead, the parent must show that he or she occupies a ‘parental role’ in the child’s life. [Citation.]” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826-827.) In addition, the parent must show that termination of parental rights would be detrimental to the child. “The juvenile court may reject the parent’s claim simply by finding that the relationship maintained during visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. . . . Because a section 366.26 hearing occurs only after

the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

In the present case, the juvenile court rejected mother's claim that the parent-child exception was established. We review the court's findings under section 366.26 for substantial evidence. (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827.)

Although Jessika was under Mother's care for the first four years of her life, and although there is affection between the two of them, nothing in the record indicates that mother has occupied a parental role during the time that Jessika has lived with her prospective adoptive family. At the section 366.26 phase of a dependency case, we look to whether the biological parent has met her or his burden of proof to qualify under the parent-child exception, and not to what has brought the child into the dependency system. Therefore, we do not consider mother's argument that Jessika was removed from her custody due to her arrest and not because mother was abusive or neglectful.

Significantly, from October 1, 2005 through March 15, 2006, mother missed 9 out of 25 visits. Toward the end of December, Jessika became less affectionate toward Mother, and did not have a problem with saying goodbye to her Mother at the end of visits. Meanwhile, Jessika had become strongly bonded to her foster family, calling her foster mother "mommy" in front of Mother and seeking the help of her foster mother instead of Mother during monitored visits. The DCFS report for the March 29, 2006 hearing stated that Jessika, on her own initiative, told the DCFS social worker that she thought it was better for her to remain with her foster family. This evidence strongly suggests that Mother was not playing a parental role in Jessika's life. Based on the record here, we conclude that substantial

evidence supports the juvenile court's finding that mother did not meet the burden of showing that the parent-child exception to termination of parental rights, set forth in subdivision (c)(1)(A) of section 366.26, applies.

DISPOSITION

The order terminating parental rights is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.